



County of Fresno

Hall of Records, Rm. 301
2281 Tulare Street
Fresno, California
93721-2198

Legislation Text

File #: 19-0237, **Version:** 1

DATE: May 14, 2019

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Resolutions of Intention to Change the Boundaries of Zone AJ of CSA 35 and Levy Special Benefit Assessments for the Maintenance of Roads within Zone AJ of CSA 35

RECOMMENDED ACTION(S):

- 1. Adopt Resolution of Intention to change to the boundaries of County Service Area No. 35, Zone AJ, to include certain adjacent territory and set a public hearing on July 9, 2019, at 9:00 a.m., or as soon after as practicable, in the Board of Supervisors chambers, to consider the proposed boundary change**
- 2. Adopt Resolution of Intention to Levy Benefit Assessments for road maintenance costs on real property in County Service Area No. 35, Zone AJ, to direct the preparation and filing with the Clerk of the Board a written Engineer's Report under the Benefit Assessment Act of 1982 and Proposition 218, and set and authorize giving notice of a public meeting on June 17, 2019, at 6:00 p.m. at the Woodward Park regional library and a public hearing on July 9, 2019, at 9:00 a.m., or as soon after as practicable, in the Board of Supervisors chambers, to consider the proposed assessment, authorize and direct the preparation of assessment ballots and related materials, and designating the Director of the Department of Public Works and Planning and/or his designees to tabulate assessment ballots.**

Approval of the first recommended action will initiate the zone boundary change process necessary to include in Zone AJ of County Service Area 35 (CSA 35-AJ) the territory within Tentative Parcel Map No. 8160 (PM 8160) and other property (APNs 580-010-11S, 580-110-12S, 580-010-14S, 580-010-15, 580-010-18S, 580-010-22, and 580-010-24) adjacent to the current boundaries of CSA 35-AJ and located west of Auberry Road accessed via East Reno Avenue. The proposed boundary change proceedings will be designated as "CSA 35 -AJ Boundary Change No. 3." Approval of the second recommended action will initiate the process to levy an assessment on specially benefitted properties in CSA 35-AJ, with boundaries changed as proposed, for road maintenance.

The two proceedings are interdependent. If the assessments to fund the service provided through the zone are not approved, the Board of Supervisors must terminate the CSA 35-AJ Boundary Change No. 3 proceeding. (Government Code, section 25217.1, subdivision (d)) However, to levy an assessment on properties receiving a special benefit from the road maintenance services provided; those properties must be within the boundaries of the zone. Therefore, the boundary change must be approved in a majority protest proceeding before a benefit assessment for road maintenance services may be levied. Conversely, if there is a majority protest to either the CSA 35-AJ Boundary Change No. 3 or the proposed benefit assessment for road maintenance services, then the zone's boundaries will remain unchanged, and existing assessments to fund road maintenance services will remain. If the CSA 35-AJ Boundary Change No. 3 and the proposed benefit assessment are both approved, then the existing benefit assessment to fund road maintenance service in CSA 35-AJ will be replaced with the newly levied assessment to fund road maintenance service in CSA 35-

AJ with boundaries changed as proposed. Although separate procedures are necessary to implement a boundary change and assessment, the proceedings may be performed concurrently as recommended.

This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

There are no viable alternative actions.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The Applicant has paid the boundary change fee of \$4,242 as specified in the Master Schedule of Fees, Section 2580.2b, as adopted by the Board in Ordinance No. 07-048.

DISCUSSION:

CSA 35 is a countywide County Service Area formed to provide County maintenance of roads created as part of developments in the unincorporated areas of the County. Zones may be formed within CSA 35 and assessments levied upon specially benefited parcels within each of those zones to fund the maintenance of roads serving the parcels in those zones.

On June 17, 1997, the Board adopted Resolution No. 97-408 forming CSA 35-AJ, which was a condition of approval for Parcel Map No. 7644. Resolution No. 08-119 was adopted March 25, 2008, approving Annexation No. 1 to CSA 35-AJ, which was a condition of approval for PM 8027. Road maintenance within CSA 35-AJ is funded by assessments levied on properties benefiting from the roads located within CSA 35-AJ. Currently there are 18 lots within CSA 35-AJ, with an additional 9 lots to be added upon the completion of Boundary Change No. 3. Since the Annexation No. 1 proceeding, the law has changed to provide that, County Service Area zones may undergo “boundary change” proceedings, rather than “annexation” proceedings. The CSA 35-AJ Boundary Change No. 2 proceeding occurred in 2016, but was terminated due to a majority protest.

There are two interdependent procedures required to change the boundary of an existing zone of benefit and levy an assessment to fund the services provided through that zone. Boundary changes are governed by County Service Area Law (Government Code, section 25210, et. seq.), while the procedure to levy an assessment on real property must be in accordance with Article XIID, Section 4 of the California Constitution, the Proposition 218 Omnibus Implementation Act (Government Code, section 53750, et. seq.), and for the purpose of road maintenance the Benefit Assessment Act of 1982 (Government Code, section 54703, et. seq.) (1982 Act).

Recommended Action No. 1: Boundary Change Proceedings

The procedure to change the boundary of an existing zone is almost identical to that prescribed to form a new zone (Government Code, section 25217.2). To change the boundary two separate Board hearings are required. The first hearing initiates the process of the boundary change and the second concludes the process with a hearing and, if there is no majority protest, may result in the establishment of a changed boundary of the zone. At the first hearing, today’s hearing, your Board may adopt a resolution initiating the boundary change. A second public hearing will be conducted to hear and consider testimony from all interested persons regarding the boundary change, to receive written objections, if any, and to determine if a majority protest exists.

To initiate CSA 35-AJ Boundary Change No. 3, your Board must adopt a resolution that:

1. States that the proposal is made pursuant to Title 3, Division 2, Part 2, Chapter 2.5, Article 8 of the California Government Code; and
2. Describes the boundaries of the territory to be included in the zone and the boundaries of the territory affected by the proposed change; and
3. States the reasons for the proposed boundary changes; and
4. States the different authorized services, different levels of service, different authorized facilities, or additional revenues that the zone, with boundaries changed as proposed, will provide; and
5. Describes the methods by which authorized services will be financed; and
6. Identifies CSA 35-AJ by name or number, and establishes a designation for the boundary change proceeding (which here is "CSA 35-AJ Boundary Change No. 3"); and
7. Fixes the date, time, and location of a public hearing to hear and consider testimony regarding CSA 35-AJ Boundary Change No. 3, receive written objections, if any, and determine if a majority protest exists; and
8. States that, at the public hearing, the testimony of all interested persons will be heard; and
9. Includes a summary of the procedures applicable to the completion, return, and tabulation of written objections to the boundary change; and
10. Directs the Clerk of the Board to prepare, mail, post, and publish a notice of public hearing to consider CSA 35-AJ Boundary Change No. 3.

By approving the first recommended action, your Board will adopt a resolution satisfying the aforementioned requirements to initiate CSA 35-AJ Boundary Change No. 3.

Approval of the first resolution will set a public hearing on July 9, 2019, at 9:00 A.M. or as soon after as practicable, but in any case before any public protest hearing on the proposed benefit assessment, in the meeting chambers of the County's Board of Supervisors, at the Hall of Records located at 2281 Tulare Street, Third Floor, Fresno, California 93721. The public hearing may be continued from time to time by the Board without further notice. At that hearing, the Board will hear and consider the testimony of persons interested in CSA 35-AJ Boundary Change No. 3, receive written objections, if any, and determine if a majority protest exists. If the Board determines that a majority protest exists, the boundary change proceeding must be abandoned.

No later than 20 days before the date and time of the public hearing stated in the preceding paragraph and set in the resolution initiating CSA 35-AJ Boundary Change No. 3, the Clerk of the Board shall mail and publish notices of that public hearing. Notices shall be:

1. Mailed to all owners of property within the zone with boundaries changed as proposed; and
2. Published one time in a newspaper of general circulation published within the County; and
3. Posted in at least three public places located within the territory of the zone with boundaries changed as proposed; and

4. Mailed to each city and special district that contains (or whose sphere of influence contains) any portion of the zone with boundaries changed as proposed.

Because 12 or more registered voters reside within the zone with boundaries changed as proposed, each registered voters residing in the zone may file a written objection with the Clerk of the Board at or before the close of the public hearing. Registered voters wishing to file a written objection will be provided a form to fill out so that they do not need to write their own objection letters, but they will still need to identify their property by address or APN. In order for a written protest to be considered, it must be properly executed and must be delivered as follows:

1. By U.S. Mail so that it is received by the Clerk of the Board no later than 9:00 A.M. on July 9, 2019; or
2. Delivered to the Clerk of the Board no later than 9:00 A.M. on July 9, 2019; or
3. Delivered to the Clerk of the Board during the Public Hearing on July 9, 2019, prior to the close of public testimony.

To determine if a majority protest exists, the territory within the zone must be evaluated as either being inhabited or uninhabited as defined by Government Code, section 25210.2, subdivision (e). If 12 or more registered voters live within the territory under consideration, the territory is inhabited. The territory is uninhabited if there are less than 12 registered voters residing within the territory. There are 40 registered voters residing in CSA 35-AJ with boundaries changed as proposed. That means a majority protest will exist if more than 50% of the total number of registered voters (or at least 21 of the 40 registered voters), residing in the zone with boundaries changed as proposed have filed written objections to the boundary change.

Testimony from all interested persons will be heard; however, only written objections from registered voters filed with the Clerk prior to the close of the public hearing will be counted in evaluating if a majority protest exists. If written objections to the proposed CSA 35-AJ Boundary Change No. 3 are properly submitted by 21 or more registered voters residing within the zone with boundaries changed as proposed, the Board must determine that a majority protest exists and terminate the proceedings.

If a majority protest exists, both the boundary change and assessment proceedings must be abandoned. If there is no majority protest to the proposed boundary change, the Board may proceed with the public protest hearing on the proposed assessment. Only if there is also no majority protest to the proposed assessment may the Board adopt the proposed boundary change.

Recommended Action No. 2: Assessment Proceedings

The adoption of an assessment to fund road maintenance in CSA 35-AJ with boundaries changed as proposed is required for CSA 35-AJ Boundary Change No. 3 to be effectuated. In accordance with Government Code, section 25217.1, subdivision (d), property owners within CSA 35-AJ with boundaries changed as proposed must approve the proposed assessment before the Board may adopt the proposed change in the CSA 35-AJ boundaries.

The process to levy an assessment on real property for road maintenance in CSA 35-AJ with boundaries changed as proposed must conform with Article XIID, Section 4, of the California Constitution and the Proposition 218 Omnibus Implementation Act (Proposition 218), and the 1982 Act.

Approval of the second recommended action, will adopt a resolution initiating that assessment proceeding and makes the following findings, determinations, and authorizations as follows:

1. Designates Hal Lore, PE - Lore Engineering, Inc. as the Assessment Engineer and directs the

preparation of a written Engineer's Report to be filed with the Clerk of the Board in conformance with Proposition 218 and the 1982 Act.

2. Sets a public meeting of the County (the "Public Meeting") for June 17, 2019, at 6:00 P.M. (or as soon after as practicable) at the Woodward Park Regional Library, 944 East Perrin Avenue, Fresno, California 93720, to hear public testimony concerning the proposed assessment. The Public Meeting may be continued from time to time by the County official conducting the Public Meeting without further notice by the Board, but in any case not later than eight days before the date set for the public hearing described below.
3. Sets a public hearing of the Board (the "Public Hearing") for July 9, 2019 at 9:00 A.M., or as soon thereafter as practicable, but in any case only after completion of the public hearing on CSA 35-AJ Boundary Change No. 3, and only if there is no majority protest in that boundary change hearing, in the meeting chambers of the Board, Hall of Records, 2281 Tulare Street, Third Floor, Fresno, California, 93721, to hear all objections and protests to the proposed assessment as set forth in the Engineer's Report. The Public Hearing may be continued from time to time by the Board without further notice by the Board.
4. Authorizes and directs the Director of the Department of Public Works and Planning (Director), or his designee, to prepare assessment ballots and assessment ballot instructions, any materials for the change, withdrawal, or substitution of assessment ballots, including substitute assessment ballots and substitute assessment ballot instructions, any materials for co-owner assessment ballots, including co-owner assessment ballots, and any other forms and materials the Director or his designee deems necessary for the submission of assessment ballots by record owners of the property in CSA 35-AJ with boundaries changed as proposed.
5. Authorizes the Director, or his designee, to prepare Joint Notices of the Public Meeting and the Public Hearing. Each of the Joint Notices shall include the following: (a) the total amount of the proposed assessment chargeable to the entire territory to be assessed, together with the proposed assessment formula or range; (b) the amount chargeable to the record owner's parcel; (c) the duration, method, and frequency of the proposed assessment; (d) the reason for the assessment and basis upon which the amount of the assessment was calculated; (e) the date, time, and place of the Public Meeting; and (f) the date, time, and place of the Public Hearing; (g) the contact information of an individual, office, or organization that interested persons may contact to receive additional information; (h) the address to which property owners may mail or deliver assessment ballots; (i) an assessment ballot; (j) a summary of the procedures for the completion, return, and tabulation of the assessment ballot; and (k) a statement that a finding of majority protest will cause the assessment to be abandoned, and cause CSA 35-AJ Boundary Change No. 3 to be terminated. Envelopes containing the Joint Notices must be labeled, in no smaller than 16-point bold type, "OFFICIAL BALLOT ENCLOSED." The Director, or his designee, shall deliver the Joint Notices to the Clerk of the Board no later than Monday, May 20, 2019.
6. Authorizes and directs the Clerk of the Board to assign and mail, upon filing of the Engineer's Report and no later than Tuesday, May 21, 2019, the Joint Notices to the record owners of the property to be assessed CSA 35-AJ with boundaries changed as proposed.
7. Establishes procedures for the receipt and custody of assessment ballots, and designates and authorizes the Director of Public Works and Planning, and his designees, to tabulate properly completed and timely submitted assessment ballots. The Board also finds and determines that each of such persons is an impartial person who does not have a vested interest in the outcome of the proposed assessment.

Engineer's Report

Pursuant to your Board's approval of the second recommended action, an Assessment Engineer is designated and an Engineer's Report will be prepared and filed with the Clerk. The Engineer's Report must be prepared by a qualified and licensed engineer. The report will be made available for public inspection in its entirety.

The Engineer's Report must be prepared in accordance with Proposition 218 and the 1982 Act. The Engineer's Report will include the cost to fund the continued maintenance of the road serving CSA 35-AJ with boundaries changed as proposed.

Assessment Ballot Measure

Owners of property in CSA 35-AJ with boundaries changed as proposed will be given the opportunity, in assessment ballot proceedings, also called a "majority protest proceeding", to indicate their support of or opposition to, in a single assessment ballot measure, an assessment imposed on their parcels, specific to each parcel's financial obligation, for the maintenance of roads in CSA 35-AJ with boundaries changed as proposed.

Assessment Ballot Process

A single assessment ballot per parcel, along with a detailed Notice and related assessment ballot instructions, will be mailed by the Clerk of the Board to owners of record whose names and addresses appear on the last equalized property tax roll, and which will also be listed in the Engineer's Report. In order for an assessment ballot to be counted, it must be properly executed and delivered, based on the recommended Public Hearing date of July 9, 2019, at 9:00 A.M., as follows:

1. By U.S. Mail so that it is received by the Clerk of the Board no later than 9:00 A.M. on July 9, 2019; or
2. Delivered to the Clerk of the Board no later than 9:00 A.M. on July 9, 2019; or
3. Delivered to the Clerk of the Board at the Public Hearing on July 9, 2019, before the close of public testimony.

Assessment ballots will remain unopened and in the charge of the Clerk of the Board, until they are opened and tabulated by the Board's designated officials after the conclusion of public testimony at the Public Hearing.

Substitute assessment ballots will also be made available for owners who previously returned their ballot and then wish to change their position or withdraw a previous ballot. Substitute assessment ballots will also be made available for owners who report that they lost or did not receive their ballot, or that their ballot is unusable for whatever reason.

If more than one of the record owners of an identified parcel wishes to submit an assessment ballot, they may do so before the conclusion of public testimony at the Public Hearing but only by using the County-provided co-owner assessment ballot for that purpose. Co-owner assessment ballots will indicate the amount of the proposed assessment to be imposed upon the identified parcel, but each properly completed and timely submitted co-owner assessment ballot will be allocated in proportion to the respective ownership interests of the persons submitting the ballot. Respective ownership interests are established either by what is shown by recorded documents or, if not shown in recorded documents, as established to the satisfaction of the Board by documentation provided by the record owners.

In either case, co-owner assessment ballots and substitute assessment ballots will be provided once the property owner executes a County request form, which will be made available upon request to the Clerk to ensure orderly ballot proceedings.

All properly completed and timely returned assessment ballots will be tabulated at the conclusion of the Public Hearing. If the ballots submitted in opposition to the proposed assessment exceed the ballots submitted in favor of the proposed assessment, with the ballots weighted according to the proportional financial obligation of the affected property, a majority protest exists and the assessment shall not be imposed and CSA 35-AJ Boundary Change No. 3 shall not be adopted.

REFERENCE MATERIAL:

BAI #16, March 25, 2008
BAI #43, December 4, 2007
BAI #13, June 17, 1997

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map
On file with Clerk - Resolution of Intention (Boundary Change)
On file with Clerk - Resolution of Intention (Levy Benefit Assessment)
On file with Clerk - CSA 35-AJ Engineer's Report, January 15, 2019

CAO ANALYST:

Sonia M. De La Rosa